

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GABRIEL R. REYES,
Plaintiff,

No. C 07-1449 PJH

v.

ROBERT HOREL, et al.,
Defendants.

**ORDER GRANTING MOTION TO
DISMISS IN PART AND DENYING IT
IN PART, AND GRANTING MOTION
TO STRIKE**

Defendants' motion to dismiss the second amended complaint and motion to strike the prayer for injunctive relief came on for hearing before this court on June 18, 2008. Plaintiff appeared by his counsel Manuel Alvarez, Jr., and defendants appeared by their counsel, Deputy Attorney General Jay C. Russell. Having read the parties' papers and carefully considered their arguments and the relevant legal authority, and good cause appearing, the court hereby GRANTS the motion to dismiss in part and DENIES it in part, and GRANTS the motion to strike the prayer for injunctive relief as follows and for the reasons stated at the hearing.

1. The motion to dismiss the claims raised via plaintiff's fourth inmate appeal ("the fourth 602") and the motion to dismiss the defendants named only in connection with the fourth 602 (defendants Kravitz, Gorospe, and Flowers) for failure to exhaust administrative remedies is DENIED.

2. The motion to dismiss the claims against defendants Martinez, Thacker, McLean, Floto, Grannis, Kravitz, Gorospe, and Flowers for failure to state a claim is GRANTED, with leave to amend.

1 3. The motion to dismiss the claims against defendants Martinez, Thacker,
2 McLean, Floto, Grannis, Kravitz, Gorospe, and Flowers on grounds of qualified immunity is
3 DENIED, without prejudice to raising this issue in a later substantive motion.

4 4. The motion to strike the prayer for injunctive relief is GRANTED, on the
5 ground that plaintiff is a member of the class in two actions pending in the Northern District
6 of California – Madrid v. Tilton, No. C-90-3094 TEH and in Plata v. Schwarzenegger, No.
7 C-01-1351 TEH – both of which involve claims for injunctive relief in connection with
8 medical care at Pelican Bay State Prison.

9 5. Plaintiff shall file the third amended complaint no later than July 18, 2008.
10 The third amended complaint shall be limited to the claims raised in the second amended
11 complaint, and shall add no new defendants.

12
13 **IT IS SO ORDERED.**

14 Dated: June 19, 2008



PHYLLIS J. HAMILTON
United States District Judge